

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PEITION NO.3919 OF 2006

Yeshwant Sahakari Sakhar Karkhana Ltd.	...Petitioner.
Versus	
Yeshwant Sahakari Sakhar Karkhana Kamgar Sangh.	...Respondent.

.....
Mr.Neel Helekar i/b. M/s.Haresh Mehta & Co. for the Petitioner.

.....
CORAM : DR. D.Y. CHANDRACHUD, J.

July 14, 2006.

P.C.:

The question which arose before the Industrial Court in a reference under Section 73 of the Bombay Industrial Relations Act, 1946, was whether the Petitioner was required to be paid bonus under the Payment of Bonus Act, 1965 on the retention allowance. The point in dispute is not *res integra* but is concluded by the judgment of the Supreme Court in **Managing Director, Chaltoon Vibhag, Sahakari Khand Udyag vs. Government Labour Officer.**¹ The judgment of the Supreme Court notes that a retention allowance is a sort of incentive which is offered to the

¹ 1981(42) FLR 189

workmen to attract them to return to the factory after the expiry of the off-season. The case before the Supreme Court also was that of a Co-operative Sugar Factory in which the retention allowance was paid to the workmen during the off season. The Supreme Court consider the definition of the expression “salary or wage” in Section 2(21) of the Payment of Bonus Act, 1965. Section 2(21) defines the expression “salary or wage” in so far as it is material to these proceedings to mean “all remuneration (other than remuneration in respect of over-time work) capable of being expressed in terms of money which would, if the terms of employment, express or implied, were fulfilled, be payable to any employee in respect of his employment or of work done in such employment and includes dearness allowance (that is to say, all cash payments, by whatever name called, paid to an employee on account of a rise in the cost of living), but does not include any other allowance which the employee is for the time being entitled to”. Mr.Justice A.P. Sen speaking for the Bench of two Learned Judges of the Supreme Court held that a retention allowance clearly falls within the expression “salary or wage” as defined in

Section 2(21) and is not 'any other allowance' which is excluded from the definition. The observations of the Supreme Court were as follows:

“There can be no doubt that the retaining allowance paid to the workmen during the off-season falls within the substantive part of the definition of the expression 'salary or wage' .It undoubtedly is remuneration which would, if the terms of employment, express or implied, were fulfilled, be payable to any employee in respect of his employment. The retaining allowance is a remuneration on a lower scale which is paid to the workmen by the management during the off-season for their forced idleness. The payment of such allowance by the management to its workmen during the off-season when there is no work and when the factory is not working, is indicative of the fact that it wants to retain their services for the next crushing season. The very fact that retaining allowance is paid to the workmen clearly shows that their services are retained and therefore, the jural relationship of employer and the employee continues. It is true that a workman may not return to work and may take up some other job or employment. In that event, he forfeits the right of payment of the retaining allowance. But when the workman returns to work when the next crushing season starts, the payment of retaining allowance during the off-season, partakes the nature of basic wage on a diminished scale. The definition of the expression 'salary or wage' given in Sec.2(21) of the Act is wide enough to cover the payment of retaining allowance to the workmen. It is nothing but remuneration correlated to service and it would be a misnomer to call it an allowance. The retaining allowance does not fall within the purview of clause (i) of the exclusionary clause of Sec.2(21) of the Act. The retaining allowance cannot be construed to be any other allowance which the employee

is for the time being, entitled. The High Court was, therefore, justified in holding that the retaining allowance paid to the seasonal employees was a part of their 'salary or wage' within the meaning of Sec. 2(21) of the Act and, therefore, must be taken into account for the purpose of calculation of bonus payable under the Payment of Bonus Act, 1965."

In this view of the matter, the Industrial Court has been justified in arriving at the conclusion that payment of bonus was liable to be made on the retention allowance. The judgment is consistent with the law laid down by the Supreme Court. No case for interference under Article 227 is made out. The petition is dismissed.

....